



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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IN REPLY PLEASE
REFER TO FILE:

WM-7

July 8, 2002

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2756

Dear Supervisors:

**COOPERATIVE AGREEMENT
BALLONA WETLAND ENVIRONMENTAL
RESTORATION PROJECT
SUPERVISORIAL DISTRICT 4
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Consider the Ecosystem Restoration Report and Finding of No Significant Impact, dated August 2000, prepared by the United States Army Corps of Engineers as issued by the City of Los Angeles in place of a mitigated negative declaration, find that the project will have no significant impact on the environment, and find that these actions reflect the independent judgement of the County.
2. Approve the project and authorize Public Works to implement this project as defined by the enclosed Memorandum of Understanding.
3. Approve and instruct the Chairman of the Board to sign the enclosed Memorandum of Understanding (MOU) between the City of Los Angeles and the County of Los Angeles, on behalf of the Los Angeles County Flood Control District. This MOU defines the roles of the City and District, including operation and maintenance responsibilities, for the new tidegates in the Ballona Wetlands Environmental Restoration Project.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Corps was authorized to conduct the Ballona Wetlands Environmental Restoration Project. The Restoration Project area is located south of Marina del Rey and the Marina Freeway, west of the San Diego Freeway and north of Los Angeles International Airport. The City and the Corps are responsible for completing and funding the Restoration Project.

The Restoration Project includes increasing the exiting tidal exchange and inundation level in the Ballona Wetlands area through the introduction of natural tidal exchange with the Ballona Creek Flood Control Channel (BCFCC). This tidal exchange required the modification of three existing flapgates at the BCFCC, with two new self-regulating tidegates and one new conventional flapgate.

This modification will allow inundation levels to the wetlands to be increased or decreased to achieve the most beneficial habitat levels without: 1) affecting existing sensitive species habitat; 2) significantly changing baseline conditions within the wetlands that would impede larger restoration expansion by other non-Federal parties; 3) significantly decreasing the water storage capacity of the wetlands; or 4) significantly increasing the potential for flooding at Culver Boulevard, which bisects the project site.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goal of Organizational Effectiveness by utilizing a collaborative effort to implement the project. The Restoration Project also satisfies the goal of Service Excellence by improving the quality of the environment.

FISCAL IMPACT/FINANCING

The City and the Corps are responsible for completing and funding the Restoration Project. The City has requested that the District allow the replacement of the new gates at the BCFCC to help accomplish the Restoration Project. The District will operate and perform routine maintenance and operation of the new gates, at the District's cost and expense as described in the enclosed MOU. Financing for the District's maintenance costs is available from Flood Control District funds.

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FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The MOU has been reviewed and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The Corps has completed an Environmental Assessment and a Finding of No Significant Impact in accordance with the National Environmental Policy Act. As the Lead Agency, the City of Los Angeles' June 28, 2002, findings fulfill the requirements of CEQA as set forth by CEQA Guideline Sections 15221 and 15225. The County is a Responsible Agency and is required to review and make the recommended findings based on the City's environmental document. The recommended findings are required prior to your Board's approval of this cooperative agreement.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This project will not have a significant impact on current flood control services.

CONCLUSION

Please return three fully executed originals of the MOU along with approved copies of this letter to Public Works.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

JD:sw/ro

A:\Ballona.wpd

Enc.

cc: Chief Administrative Office
County Counsel

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU), is made and entered into this ___ day of ___, 2002, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, hereinafter referred to as "DISTRICT," and the CITY OF LOS ANGELES, a municipal corporation in the County of Los Angeles, hereinafter referred to as "CITY."

WITNESSETH:

WHEREAS, Secretary of the U.S. Army Corps of Engineers ("CORPS") is authorized under Section 1135(b) of the 1986 Water Resources Development Act, Public Law 99-662, to conduct the Ballona Wetlands Environmental Restoration (the "Restoration Project") as more fully explained in that certain "Ecosystem Restoration Report" prepared by the CORPS dated August 2000 ("Restoration Report"); and

WHEREAS, the CITY and the CORPS are responsible for completing and funding the Restoration Project; and

WHEREAS, the Restoration Project includes increasing the existing tidal exchange and inundation level in Ballona wetlands area through the introduction of a natural tidal exchange with the Ballona Creek Flood Control Channel ("Channel"); and

WHEREAS, the DISTRICT owns, maintains, and operates the Channel at the location where the City and the CORPS desire the Restoration Project; and

WHEREAS, the CITY and the CORPS believe that the tidal exchange can be accomplished by replacing ("Replacement Project") three existing flapgates (the "Existing Gates") at the DISTRICT's channel wall near the mouth of the Channel with two new self-regulating tidegates and one new conventional flapgate ("New Gates"); and

WHEREAS, CITY has requested that the DISTRICT allow the Replacement Project at the Channel to help accomplish the Restoration Project; and

NOW, THEREFORE, the DISTRICT and the CITY agree as follows:

1. Obligations of the DISTRICT

- a. Under the terms herein, the DISTRICT shall permit the CITY and/or the CORPS to replace the Existing Gates with the New Gates (the "Installation"), at the CITY's sole cost and expense, at the DISTRICT's channel wall located near the mouth of the Channel. The parties shall therefore execute the DISTRICT's standard entry permit to enable this task.

- b. After the DISTRICT accepts the Installation of the New Gates pursuant to Section 2a below, the DISTRICT shall operate and perform the routine maintenance and operation of the New Gates, at the DISTRICT'S cost and expense, as set forth in a written Operation and Maintenance Manual ("O&M Manual") that the CORPS, DISTRICT, and CITY must agree to.
- c. The DISTRICT shall indemnify hold the CITY and its employees harmless from any and all claims, expenses, losses or damages (including attorneys' fees and costs) for damages to property caused by the DISTRICT's failure to perform the routine operation and maintenance of the New Gates as required of the DISTRICT under the O&M Manual.

2. Obligations of the CITY

- a. The CITY shall be responsible, at the CITY's sole cost and expense, to complete all necessary engineering, design and construction of the Installation, in a competent manner to meet all applicable engineering and/or professional standards, and pursuant to the plans and specifications approved by the DISTRICT, a copy of which are attached hereto as Exhibit A, and in accordance with any and all applicable laws, including laws relating to environmental compliance. Notwithstanding the foregoing, the Installation shall be completed to the DISTRICT's full and complete satisfaction, as determined at the sole and absolute discretion of the DISTRICT.
- b. Following the Installation, the CITY shall be responsible, at the CITY's sole cost and expense, to repair, replace, and rehabilitate the New Gates to the DISTRICT'S full and complete satisfaction. In this regard, the CITY shall be solely responsible for any and all maintenance, repair, or replacement costs to keep the New Gates fully operational, including to permit the DISTRICT to perform its flood control or water conservation functions, unless the work is explicitly and specifically identified as routine operation or maintenance to be performed by DISTRICT under the O&M Manual.
- c. CITY shall indemnify, defend, and hold the DISTRICT harmless from any and all claims, expenses, losses, or damages (including attorney's fees and costs) relating to any claim or assertion that may relate to 1) a defect or deficiency in the design, construction, or Installation of the New Gates; 2) the CITY's acts to repair, replace, rehabilitate or to perform any other work on the New Gates that the CITY may perform following the installation; 3) relating to any failure to comply with any requirement relating to the Restoration Project, including, without limitation, as may be contained in the Restoration Report or any similar report or study, or the California Environmental Quality Act, or any Federal equivalent, such as NEPA, or any other applicable law; 4) except to the extent caused by the DISTRICT's negligence in failing to perform routine operation and maintenance of the New Gates as required of the DISTRICT under the

O&M Manual, relating to any harm to flora or fauna alleged to result from any operation or maintenance of the New Gates (including, without limitation, to the Belding Savannah Sparrow); or 5) in all cases relating to an alleged damage to listed threatened or endangered species, including, without limitation, the Belding Savannah Sparrow, and based on the failure to obtain an Incidental Take Permit or other permit required under the Endangered Species Act, including without limitation, under Sections 2081(b) and (c) of the California Endangered Species Act or pursuant to CCR Title 14 Sections 783.0- 783.8, or the failure to obtain any equivalent permit from the Department of Fish and Game or any similar agency ("Incidental Take Permit").

- d. The CITY shall be responsible, at the CITY's sole cost and expense: 1) for obtaining and maintaining any and all additional permits from any third party agencies; and 2) for meeting any and all requirements of any third party agency claiming jurisdiction, as may be needed to allow the operation and maintenance of the New Gates, including, without limitation, as may be needed from the California Department of Fish & Game (including, without limitation, in connection with the Belding Savannah Sparrow and including, as may be deemed necessary at any time, any Incidental Take Permit). Without limiting the foregoing, except to the extent caused by the DISTRICT's negligence in failing to perform routine operation and maintenance of the New Gates as required of the DISTRICT under the O&M Manual, but (irrespective of the DISTRICT's acts or failure to act) not excepting in connection with any Incidental Take Permit, the City also agrees to respond, at the CITY' sole cost and expense, to the California's Department of Fish & Game's or any other agencies' requests, questions, citations, fines or any other demands, including on behalf of the DISTRICT, that relate to harm to flora and fauna resulting from the operation of the New Gates.

3. Mutual Covenants

- a. Precedence of Flood Control and Water Conservation Functions - Notwithstanding any other provision in this MOU, nothing in this MOU shall interfere with the DISTRICT's function to provide flood control and water conservation or to protect the health and safety of the public. The CITY acknowledges that, notwithstanding this MOU, the DISTRICT's flood control and water conservation functions are primary and supreme in dictating the operation of the New Gates over and above any work or act relating to the Restoration Project.
- b. O&M Manual. The parties' agreement and adoption of the O&M Manual is a condition precedent to this Agreement.

- c. Effect of Approvals By DISTRICT - Notwithstanding any other provision in this MOU, the DISTRICT's approval of any plans or specifications relating to the New Gates, of the Installation, or any other work relating to this MOU, shall not excuse the CITY, the CITY's contractors, or any other party, from their obligations to deliver the New Gates in a competent manner to meet all applicable engineering and/or professional standards or from any negligence or failure to meet professional standards in connection with the engineering, design or construction, reconstruction or any work they perform relating to the New Gates.
- d. DISTRICT Not Responsible For Restoration - Other than as may be explicitly required of the DISTRICT in this MOU, neither the DISTRICT or any related agency (**e.g.**, the County of Los Angeles) shall have any obligation to perform any act that may relate to the Restoration Project, including, without limitation, to comply with any environmental mandate, law (including CEQA and NEPA) or activity, including to conduct an annual biological monitoring of the of the wetland community or any other activity described or required in the Restoration Report or any applicable law, regulation or mandate.
- e. Governing Law - This MOU shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of California.
- f. Amendment - No variation, modification, change or amendment of this MOU shall be binding upon either party unless such variation, modification, change, or amendment is in writing and duly authorized and executed on behalf of the DISTRICT by the Los Angeles County Board of Supervisors or its authorized designee and the CITY. This MOU shall not be amended or modified by oral agreements or understandings between the parties or by any acts or conduct of the parties.
- g. Entire MOU - This MOU constitutes the entire agreement between the parties with respect to the subject matter of this MOU and supersedes all prior and contemporaneous agreements and understandings.
- h. No Third-Party Beneficiary/ Successors and Assigns - This MOU is made and entered into for the sole protection and benefit of the DISTRICT and the CITY and their successors and assigns. No other person or entity may assert any rights based upon any provisions of this MOU.
- i. Waiver - No waiver of any breach or default by either party shall constitute a waiver of any other breach or default, nor shall any such waiver constitute a continuing waiver.

- j. Severability - If any provision of this MOU shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this MOU shall not be affected and this MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.
- k. Counterparts - This MOU may be executed simultaneously or in any number of counterparts, each of which together shall constitute one and the same instrument.
- l. Interpretation - Both parties have been represented by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language and any ambiguities shall not be resolved against the drafting party.
- m. Assignment - Neither party shall assign this MOU or any of such party's interest, rights or obligations under this MOU without the prior written consent of the other party, which consent shall not be unreasonably withheld except that either party may assign the MOU, or any part thereof, to any successor governmental agency performing the functions of the assigning party as its successor.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date shown.

ACCEPTED AND AGREED:

COUNTY OF LOS ANGELES

**CITY OF LOS ANGELES,
DEPARTMENT OF PUBLIC WORKS
BUREAU OF SANITATION**

By _____
Chairman

By _____
City Engineer

ATTEST:
VIOLET VARONA-LUKENS
Executive Officer-Clerk of
The Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:
LLOYD W. PELLMAN
County Counsel

By _____
Frederick W. Pfaeffle
Senior Deputy County Counsel

APPROVED AS TO FORM:
Rockard J. Delgadillo, City Attorney

By _____
Christopher M. Westhoff
Assistant City Attorney